

**ARIZONA JUDICIAL COUNCIL'S
LIMITED JURISDICTION COURTS COMMITTEE**

**Arizona State Courts Building
Conference Room 119A & B
Phoenix, AZ 85007**

November 28, 2001

Members Attending:

Honorable R. Michael Traynor, Chair
Honorable George Anagnost
Ms. Kathy Barrett
Ms. Faye Coakley
Honorable Judy Ferguson
Honorable John Kennedy
Mr. Don Jacobson
Mr. Theodore Jarvi
Ms. Pamela Jones

Honorable John Lamb
Honorable Michael Lester
Honorable Ronald O. McDaniel
Honorable G. Michael Osterfeld
Mr. Dale Poage
Honorable Antonio Riojas, Jr.
Mr. Ben Rowe, Jr.
Honorable Mary Scott
Mr. Paul Thomas

Absent Members:

Hon. Manuel Figueroa

Honorable Sherry Geisler (excused)

Guests:

Mr. Tom Dorn
Mr. Jeff Fine
Honorable Elizabeth Finn
Vice Chief Justice Charles Jones

Mr. John MacDonald
Ms. Pamela Najera
Mr. Scott Owens

Staff:

Mr. Mike Baumstark
Mr. David Berg
Ms. Beverley Boyd
Mr. George Diaz, Jr.
Ms. Agnes Felton
Ms. Debby Finkel
Ms. Theresa Gonzales
Ms. Jennifer Greene
Ms. Debra A. Hall
Mr. Karl Heckart
Ms. Lori Johnson

Mr. Robert Molina
Ms. Pam Peet
Ms. Christine Powell
Mr. David Sands
Mr. Bob Schaller
Ms. Janet Scheiderer
Mr. Patrick Scott
Ms. Nancy Swetnam
Mr. David Withey
Ms. Amy Wood

REGULAR BUSINESS

1. Call to Order

Judge R. Michael Traynor called the meeting to order at 11:05 a.m. Judge Traynor welcomed Mr. Dale Poage as a new LJC member and asked Mr. Poage to introduce himself.

2. Approval of Minutes from the September 12, 2001 Meeting

Judge Traynor asked if there were any changes or corrections to the September meeting minutes. None were made.

MOTION: Motion was made and seconded **to approve the minutes from the September 12, 2001 meeting as presented. The motion was passed unanimously. LJC-01-33.**

INFORMATION/POTENTIAL ACTION ITEMS

Since the next presenters were not immediately available, Judge Traynor asked for and received consensus to allow Judge George Anagnost to present the Proposed Rules of Civil Traffic Procedures next on the agenda.

3. Proposed Rules of Civil Traffic Procedures

Judge Anagnost stated that the proposed rule changes are intended to simplify and clarify the Rules for the lay person. The changes are intended to expedite the appeals process. The work group also suggested that the forms be approved for use, but not mandated. The forms will be adopted by either Administrative Order or Code. He gave a brief overview of the changes.

Two changes were suggested:

1. Add references to redirect and recross where there is reference to direct and cross in Rule 19.
2. Remove "without prejudice" in Rule 21.

MOTION: Moved and seconded that the **proposed Rules be accepted with the additional suggested changes Rules 19 and 21. Motion was passed unanimously. LJC 01-34**

Mr. Jarvi commended Judge Anagnost for his perseverance and efforts. Judge Traynor commended AOC staff for their assistance with the project.

4. Legislative Update

Mr. George Diaz stated that two proposals that LJC voted to include in the judiciary's legislative package, records retention and terms of judges pro tempore.

Mr. Diaz presented a new legislative proposal that impacts justices of the peace productivity credits. Judge Mike Osterfeld stated that this proposal cleans up the conflict in productivity credits between misdemeanor and some criminal traffic cases, but they use different multipliers. The proposal also includes petty offenses for the first time.

Judge John Kennedy said that this proposal leaves in two civil offenses and generalized criminal traffic.. The biggest change is in A1. The Legislature changed criminal offenses for boating cases to petty offenses. The statutes were not clear as to how those offenses count with productivity credits. He also stated that this proposal is intended to be for clean up and not a rewrite.

MOTION: Motion made and seconded to **table voting on this issue until after the JP Enhancements presentation. Motion was passed. LJC 01-35**

5. Arizona Code of Judicial Administration - Presiding Judges

Ms. Jennifer Greene stated that no substantive changes were made to the sections referring to presiding justices of the peace, presiding municipal court judges or presiding judges of the county. The administrative order was transferred to code format.

Judge Osterfeld suggested amending the term of position for presiding justices of the peace to be July 1 through June 30 to allow the previous presiding judge to finish the budget cycle. If the term cannot be changed on a statewide basis, he suggested that the term be left to the discretion of the presiding judge of each county. Ms. Greene replied that she will draft an amendment to accommodate the flexible term issue.

MOTION: Motion made and seconded that the **new ACJA for presiding judges be recommended for approval with the term amendment. Motion was passed. LJC 01-36**

6. Justice of the Peace Enhancements - White Paper

Vice Chief Justice Charles Jones updated LJC on the background of the JP enhancement issues. In October, several people from the Supreme Court met with the Arizona Republic editorial board and learned of three editorials that were being written for November publication. The JP system has been in place for about 100 years without change. The Commission on the Courts as well as the

Committee to Study Improvements in the Limited Jurisdiction Courts studied and reviewed the limited jurisdiction courts and made recommendations. No legislative proposals have been enacted to date.

Some areas needing enhancement are:

Training for current justices of the peace as well those considering running for office. Some areas of law need to be taught, such as evidence and procedures.

Qualifications are currently 18, U.S. citizen and able to read and write English. Enhancing qualifications should be reviewed and studied. The Commission on Judicial Conduct does a nice job of ferreting out problems however, there are too many problems.

Mr. Mike Baumstark stated that the white paper was not a planned position at this point. It was “not on the radar screen.” The editorial boards were the catalysts for this effort. Simultaneously, but independently, one of the state senators invited Mr. Dave Byers and Mr. George Diaz to talk about justices of the peace and justice of the peace reform. Both Senators Jerrett and Smith have an interest in doing something, but aren’t specific as to what. The white paper arose from Mr. Byers’ notes at the meeting. The white paper allows the courts to have a say in what happens about a lack of resources, facilities, legal resources and funding.

Vice Chief Justice Jones responded that municipal court judges may be interested in participating in the enhanced training or whatever may be developed to improve the courts.

Mr. Baumstark stated that legislation may come forward this year, but no one knows yet. There will be updates to the white paper based on comments from LJC members and others.

LJC 01-35, tabled issue of productivity credits, was brought back to LJC for action.

MOTION: Motion made and seconded to **include the proposal on productivity credits in the judiciary’s legislative package. Motion was passed unanimously. LJC 01-36**

Lunch Break

7. Arizona Code of Judicial Administration - Public Meetings

Mr. David Withey reviewed the proposed code concerning public meetings. A provision was added defining public council. A section was added about executive sessions. There is a requirement to post meeting notices on the website. There are definitions for “meeting” and “legal advice.”

Ms. Barrett noticed that there is an inconsistency in terms of when public notice

needs to be posted. It was suggested to change subsection C(s)(a) by reducing the time in advance of the meeting when the final agenda must be available from 48 hours to 24 hours. In subsection D(2) clarify that the minutes made available have not been approved by the public council.

MOTION: Motion made and seconded that the **ACJA on Public Meetings be approved with the suggested recommendations. Motion was passed. LJC 01-37.**

8. Proposed Rules of Appellate Procedure - Criminal

Judge Anagnost reviewed the following rule changes:

Rule 1 - Record of proceedings and records are covered in another part of the rules.

Rule 6 - Bond on Appeal are governed by Rule 7.2. Stay of execution issues are addressed in Rule 30.3, so Rule 6 restates it.

Rule 7 - clarifies what constitutes the record.

An abrogation of Rule 30 may be needed since all appeals will be on record.

Judge Lamb suggested that the proposed rule changes may flow better if Rule 10 became Rule 9 and vice versa. Nothing in the Rules address Judge Lamb's concern for time lines within which superior court is to act. Judge Anagnost will look at getting a local rule to clarify it.

The flow of money did not change. Mr. Jarvi expressed concern about the defendant being incarcerated too long. The filing of notice of an appeal is the start of the appeals process. Mr. Jarvi wanted to know at what point does the case become a superior court case. He also wanted to know how the sheriff would know to release an incarcerated defendant. Judge Kennedy stated that the commitment order would give the sheriff the authority to release the defendant.

MOTION: Motion made and seconded to **approve the proposed rule changes with amendments. Motion was passed. LJC 01-38.**

9. Defensive Driving Subcommittee

Proposal to Allow Alternative Delivery Methods (ADM) - Mr. Bob Schaller and Ms. Nancy Swetnam stated that they wanted LJC to review the proposal again before AJC votes on December 13th.

Ms. Swetnam described the original intent of the defensive driving legislation was for the program to serve as a sanction and to divert traffic offenders from the court. ADM gives another option to accomplish this intent. ADM provides

testing of the course participant, compliance with ADA requirements and consistency in content dissemination.

Major concerns about ADM are how does the court/school validate that the person who received the ticket is the same one who attended the class and who took the test. There are several ideas for validation of identification and participation designed to give schools options from which to choose.

Most requests the DDP receives are for internet classes. Video ADM classes can use the same principles for validation and testing.

A concern was expressed if ADM diminishes the sanction component of defensive driving school attendance. Tight parameters can be placed on when the defendant is allowed to complete the course and within what time frame. The DDP will require local retention of both hard and electronic records. Local issues, such as a snow storm, would be addressed more quickly. Ms. Barrett questioned how schools would make allowances for internet providers going down.

Policies 1-4 remain the same and 5 will be amended to 120 days. Number 7 will eliminate the availability to have required certified instructors on site for attendees to question. School staff will have the ADM materials available to respond to questions which addresses policies 8 and 9.

Ms. Swetnam reported that most calls the internet schools receive are related more to technical questions.

Policy 10 needs to be amended to allow for validation options.

The impact on courts' procedures and reporting remains the same. The schools set their own fees and collect their own fees, court diversion fees and state fees.

Judge Antonio Riojas proposed school monitoring and auditing. AOC would require schools to have records to evaluate ADM programs.

The question of whether in-class participants to be tested was asked.

MOTION: Motion made and seconded to **approve the revised defensive driving school policy with amendments as presented. Motion was passed. LJC 01-39**

MOTION: Motion made and seconded to **require the schools to provide instructors during normal business hours. Motion was passed. LJC 01-40**

Mr. Schaller informed the committee that he heard legislation may be proposed

that eliminates defensive driving schools. The proposal would have the court “bank” a defendant’s ticket for two years. If the defendant receives no additional tickets within that two year period, the ticket is dismissed.

Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms Update

Judge Traynor stated that Catherine Drezak received a letter from the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms Department. It addressed LJC’s concerns if a conviction was set aside, by stating that the original conviction would not be held against the defendant on a federal level.

10. Update on the Disposition Report Form

Ms. Lori Johnson updated the committee on the administrative order that would take the disposition report form out of the Rules.

11. Domestic Violence Module Update

Mr. Karl Heckart stated that all ACAP courts with the exceptions of Mohave County and the Scottsdale Municipal Court have the new domestic violence module. The petition entry fields are now optional.

Other courts are part of phase II which is scheduled for mid-summer. There are 1100 protective orders in the central repository of which 300 have been served.

The AOC is working with DPS to get the access pointer working. He is meeting with the AZ Criminal Justice Commission (ACJC) to talk to law enforcement to update their business processes.

Future Upgrades to AZTEC: The superior court level will have the separate docket entry eliminated. CACC will retest the system for high volume citation entry, bond processing, bank reconciliation. The automatic transmission of disposition processing has some bugs in it. There will be a queuing screen to view before transmission can occur.

12. Public Access Website to Data Warehouse

Ms. Janet Scheiderer relayed the history of public access and progress that has been made to date, including the data warehouse and judicial dashboard. There is still data clean up that needs to occur and increasing requests for bulk data.

Mr. Heckart presented the various screens available through the data warehouse. Discussion enveloped about what information should be made public and in what time frame. Further discussion ensued about just opening

the data warehouse information to just the court community for a while. Judge Elizabeth Finn stated that Rule 123, Public Access, is being followed. Ms. Barrett suggested that there be a disclaimer for cases not included. Ms. Scheiderer added that the disclaimer should include that limited information is available, not entire cases. Mr. Heckart stated that there will be links to other areas.

Mr Heckart and Ms. Scheiderer requested that committee members advise them as to what information should be available and what should not.

13. Domestic Violence Forms

Judge Finn stated that the Forms Committee of the Committee on the Impact of Domestic Violence on the Courts (CIDVC) is in the process of revising the forms.

The petitions for orders of protection and injunctions against harassment are down to one page each. The committee's goals are to reduce data entry and to have one page forms.

Judge Traynor stated that automated systems would have to be re-programmed to accommodate the new forms. Mr. Don Jacobson noted that timing is an issue. Training and resources are tight. Having new forms now would mean changing set priorities.

Mr. Heckart stated that resources would be needed to re-program. Mr. David Berg expressed concern about the impact this would have on the case management component of AZTEC.

Judge Anagnost asked if there could be one form for either petition. Judge Finn stated that CIDVC determined the form would be 2-3 pages. The same situation applies to one order form as well.

The PCO codes and paragraph numbers are not going to be in the next upgrade to AZTEC.

The suggestion was made that the Forms Committee coordinate with the next AZTEC rollout and get input from AZTEC courts.

14. Strategic Planning Subcommittee

Ms. Christine Powell stated that two or more years of work are in Justice 2002. Four have been carried over to next strategic agenda. A fifth one was added. Simplifying and providing forms to pro per litigants and to get attorneys to assist in filling out forms. The Vice Chief Justice wants to take another look at the practice of law to see if it all needs to be adversarial.

The Arizona Judicial Council (AJC) will be looking that the Strategic Agenda for 2002-2005.

OTHER BUSINESS

15. Call to the Public

Judge Traynor called to the public.

16. Adjournment

Motion: Motion was made and seconded to **adjourn the meeting.**
Motion was passed. LJC 01-41.

Meeting was adjourned at 4:35 p.m.

Respectfully submitted,

Ms. Debby Finkel
Staff to the Limited Jurisdiction Courts Committee